

## AGREEMENT OF SALE

This agreement (the "Agreement") is made as of January 14, 1999 by and between **Philip Morris Incorporated**, a Virginia corporation with executive offices located at 120 Park Avenue, New York, New York 10017 ("Seller"), and **Phoenix Marketing & Research, Inc.**, a New York corporation, with executive offices located at 2130 Pond Road, Unit H, Ronkonkoma, New York 11779 ("Buyer").

WHEREAS Seller wishes to sell certain used equipment located at Buyer's warehouse in Ronkonkoma, New York (the "Premises"), to Buyer, and

WHEREAS Buyer wishes to purchase such equipment from Seller on the following terms and conditions,

NOW, THEREFORE, Seller and Buyer agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all of Seller's right, title and interest in and to 17 10x22 and two 10x10 tent sets (the "Tents") which each contain approximately 18 poles and are stored in 14-foot shipping crates located at the Premises.

2. In payment for the Tents, Buyer agrees to pay Seller on January 21, 1999 (the "Closing"), the sum of \$4,000.

3. THE TENTS COVERED BY THIS AGREEMENT ARE PURCHASED BY BUYER "AS IS" AND "WITH ALL FAULTS" AND THE BUYER ACKNOWLEDGES THAT NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE TO BE IMPLIED IN THIS TRANSACTION.

It is further agreed that there are no understandings, agreements or representations, expressed or implied, not specified herein respecting this transaction, and this Agreement contains the entire agreement between the parties.

4. No claim of any kind made by Buyer against Seller in respect of or related to this Agreement shall be greater in amount than the purchase price of the Tents as stated herein; failure to give notice of claim within 30 days after the date of the Closing shall constitute a waiver by Buyer of all claims in respect of the Tents. Buyer's sole and exclusive remedy for any breach of this Agreement or liability of Seller in connection with the transaction provided for herein shall be damages not to exceed the purchase price of the Tents as stated herein. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY LOSS, DAMAGE, CLAIM, LIABILITY, EXPENSE OR PENALTY OR FOR ANY INDIRECT, SPECIAL, SECONDARY INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWSOEVER OR WHENEVER THE SAME MAY ARISE.

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5. Buyer shall indemnify, defend, and hold Seller, its employees and agents harmless from and against any and all liabilities, damages, injuries, claims, suits, judgments, causes of action, and expenses (including reasonable attorney's fees, court costs and out-of-pocket expenses) arising out of or in any way related to the use, removal, transportation, operation, storage or misuse of the Tents in any way whatsoever occurring after the Closing.

6. Seller warrants that it possesses unencumbered title to the Tents and will transfer title to the Tents free of all encumbrances and liens, except as otherwise stated herein, upon Seller's receipt of payment.

7. At the time of the Closing, Buyer will have inspected the Tents to its satisfaction and Buyer's consummation of the transaction described herein will be conclusive evidence of Buyer's satisfaction with the Tents.

8. Within 30 days after the date of the Closing, and in any event prior to Buyer's use of the Tents for any promotional purposes, Buyer will destroy the 30 branded skin sets accompanying the Tents and provide to Seller a letter of destruction.

9. Risk of loss associated with the Tents will be transferred to Buyer at the Closing.

10. This Agreement shall be governed by and construed in accordance with the substantive laws, but not the laws of conflict, of the State of New York.

11. This Agreement may not be modified except by an amendment in writing duly executed by the parties.

12. This Agreement may not be assigned by Buyer, by operation of law or otherwise, without the prior written consent of the Seller.

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IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

SELLER:

PHILIP MORRIS INCORPORATED

BY: *[Signature]*

TITLE: *Group Manager*

DATE: 1/28/99

BUYER:

PHOENIX MARKETING & RESEARCH INC.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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